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EXAMINER

TRUONG, LOAN

ART UNIT	PAPER NUMBER
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2114

MAIL DATE	DELIVERY MODE
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09/19/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/613,092

Applicant(s)

ISHII ET AL.

Examiner

LOAN TRUONG

Art Unit

2114

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This office action is in response to applicant's amendment filed on June 21, 2007 in application 10/613,092.
2. Claims 1-24 are presented for examination. Claims 1-3, 6, 9, 11-13, 21-23 are amended. Claims 24 are newly added.

Response to Arguments

3. Applicant's arguments with respect to claims 1-24 have been considered but are moot in view of the new ground(s) of rejection.

In regard to claim 1, applicant stated that Richard fails to describe the newly amended limitation of the kernel image that permits the creation of the boot OS based upon only receiving one or more kernel parameters associated with the type of OS installed. Applicant points out that paragraph 0053 and 0054 of Richard does not teach a kernel image by transmitting all of the OS files from the backup computer. On the contrary, paragraph 0053 of Richard disclosed the backup agent performing a systematic analysis of the backup objects existing in the user's configuration and establishes a list of those which is representative of configuration. Therefore, Richard does not teach transmitting all of the OS files but instead a list of user's configuration. Furthermore, Richard teaches extracts the objtab.dat table contained within the ISO image of the CDROM the identification of the operating system being used and re-establishes a set of parameters (*paragraph 0088*). Refer to claim 1 for further details.

In regard to claim 3, applicant also stated that Richard fails to teach the limitation of transmitting the file via a network directly to said computer. Richard teaches of the transfer of

Art Unit: 2114

the image from the “gold” or “master” disk for the purpose of re-establishing a remote access to a backup server (*paragraph 0004*).

For the above mention reasons, the rejection is maintained.

Claim Objections

4. A series of singular dependent claims is permissible in which a dependent claim refers to a preceding claim which, in turn, refers to another preceding claim.

A claim, which depends from a dependent claim, should not be separated by any claim, which does not also depend from said dependent claim. It should be kept in mind that a dependent claim may refer to any preceding independent claim. In general, applicant's sequence will not be changed. See MPEP § 608.01(n).

Claims 21-23 depend on claim 24 and are not dependent on a preceding claim.

Appropriate correction is required.

5. Claim 11 is objected to because of the following informalities: line 6 of claim 11, examiner interpreted to be missing a “to” preceding the first occurrence of “store”.

Furthermore, it is unclear whether the limitation of restores the content of said hard disk “into the same hard disk or a new hard disk” is intentionally left in the claim or mean to be removed for similar reasons as in claim 3. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

Art Unit: 2114

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claim 11 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 11 disclosed the limitation of restoring the content of said hard disk into a new hard disk in said computer. It is not clear whether applicant means to replace the existing hard disk in said computer or replacing it altogether.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-2, 4-10, 14, 16, 18-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Richard (US 2001/0056425).

In regard to claim 1, Richard disclosed a backup system for backing up a hard disk of a computer which is connected to a server via a network, characterized in that said server comprises:

a boot OS creation section adapted to create a boot OS for said computer (*Server burns CDROMs with bootable partition and ISO image, fig. 4, 37, paragraph 0068-0070*);

a backup section adapted (*BIOS prompts the user to choose whether to boot on the CDROM or on the C: drive, fig. 5, 42, paragraph 0080*) to store as a file content of the hard disk, inclusive of a system region (*the bootable partition or bootstrap further comprises the dos kernel (io.sys, msdos.sys, config.sys) and rebuild.exe., paragraph 0070 lines 1-24*), in said computer into a designated backup destination (*server receives backup service request for restore CDROM, fig. 4, 31, paragraph 0069-0070*) regardless of a type of an OS installed and a type of a file system (*backup agent send backup service request to server by sending the OS type and version with ID and password, fig. 2, 11-12, paragraph 0051*);

a management information database adapted to store therein management information of said computer (*backup process stored objects received by server within a database, fig. 1, 4, paragraph 0048*); and

a kernel image adapted to serve for the creation of said boot OS (*ISO image, fig. 4, 37, paragraph 0068-0070*) based on one or more kernel parameters identifying said OS installed on said computer (*the bootable partition or bootstrap further comprises the dos kernel in addition to the msdos kernel incorporated within the diskette image, paragraph 0070, bootable partition based on the DOS kernel or LINUX OS kernel, paragraph 0077*).

In regard to claim 2, Richard disclosed the backup system as claimed in claim 1, said server further comprising a restore section adapted to restore the content of said hard disk into a hard disk in said computer or into a hard disk of another computer by using the file which has been stored as a file by said backup section (*execute POST (power-on-self-test) and start booting on CDROM, fig. 5, 41, 43, paragraph 0078-0081*) and by transmitting the file via a network directly to said computer or said another computer (*"gold" or Master" image of a typical configuration which contains the OS with the appropriate drivers and can be used for re-creating, when required, an image of the configuration in one machine, paragraph 0004-0006*).

In regard to claim 4, Richard disclosed the backup system as claimed in claims 1, wherein said boot OS creation section includes:

a parameter creating portion adapted to allow said kernel image to serve as said boot OS (*booting partition is arranged to contain a set of file systems, paragraph 0070*); and

a writing portion adapted to store said boot OS (*CDROM which has a booting partition, paragraph 0067*).

In regard to claim 5, Richard disclosed the backup system as claimed in claims 1, wherein said backup section includes:

an information managing portion adapted to manage information for backup (*backup process stored objects received by server within a database, fig. 1, 4, paragraph 0048*);

a reading portion adapted to read the content of the hard disk in said computer while compressing it (*backup agent compressed data to be transmitted through the network, paragraph 0064*); and

a writing portion adapted to write said compressed content into said designated backup destination (*server receives compressed data sent from the backup agent, paragraph 0064*).

In regard to claim 6, Richard disclosed the backup system as claimed in claims 1, wherein said restore section includes:

an information managing portion adapted to manage information for restore (*BIOS prompt the user to choose where to boot and permits the booting process to proceed, paragraph 0080-0081*);

a reading portion adapted to read a file of a restore origin while expanding it (*extract OS id and reestablish setting, fig. 5, 51, paragraph 0088*); and

a writing portion adapted to write this expanded content into a hard disk as a restore destination (*rebuild.exe will manipulate FAT directory and file system objects, paragraph 0091*).

In regard to claim 7, Richard disclosed the backup system as claimed in claims 1, wherein said backup section includes a padding portion adapted to pad an unassigned region in the hard disk in said computer with specific values (*backup agent performs an analysis of backup objects and establishes a lists of those representative of configuration, paragraph 0053*).

It is inherent that unassigned regions or non-representative of configuration regions are not transmitted to the backup server, therefore it would have a specific value of null or zero.

In regard to claim 8, Richard disclosed the backup system as claimed in claims 5, wherein said information managing portion included in said backup section is adapted to store certification data, and wherein said restore section includes a certifying portion adapted to perform certification using said stored certification data by said information managing portion included in said restore section (*prompts the user to enter the id and password, paragraph 0084-0086*).

In regard to claim 9, Richard disclosed a method of backing up a hard disk connected to a computer, characterized by comprising:

creating a boot OS for booting said computer by using an external storage device or via a network, independently of an OS installed in said computer and a type of a file system, as a backed-up object (*Server burns CDRoms with bootable partition and ISO image, fig. 4, 37, paragraph 0068-0070*);

booting said computer with said boot OS (*user selects CDRom to boot from the booting partition, fig. 5, 43, paragraph 0081*); and

backing up the content inclusive of a system region (*the bootable partition or bootstrap further comprises the dos kernel (io.sys, msdos.sys, config.sys) and rebuild.exe., paragraph 0070 lines 1-24*), of a hard disk connected to said computer into a selected one of a server via said network (*backup agent transmits each backup object to the server, fig. 2, 16, paragraph 0054*), a

Art Unit: 2114

storage medium over said network (*backup database, fig. 1, 4, paragraph 0048*), or a storage medium directly connected to said computer (*CDROM, paragraph 0081*).

In regard to claim 10, Richard disclosed the method as claimed in claim 9, further comprising restoring said content of the hard disk connected to said computer into a hard disk connected to another computer by using a file backing up the content of the hard disk in said computer (*config.sys cause execution of rebuild.exe which re-establishes a set of parameters for ensuring a correct starting of the operating system at the next boot of the machine, fig. 5, 45, 51, paragraph 0083 and 0088*).

In regard to claim 14, Richard disclosed the backup system as claimed in claim 2, wherein said boot OS creation section includes:

A parameter creating portion adapted to allow said kernel image to serve as said boot OS (*booting partition is arranged to contain a set of file systems, paragraph 0070*); and

A writing portion adapted to store said boot OS (*CDROM which has a booting partition, paragraph 0067*).

In regard to claim 16, Richard disclosed the backup system as claimed in claim 2, wherein said backup section includes;

An information managing portion adapted to manage information for backup (*backup process stored objects received by server within a database, fig. 1, 4, paragraph 0048*);

Art Unit: 2114

A reading portion adapted to read the content of the hard disk in said computer while compressing it (*backup agent compressed data to be transmitted through the network, paragraph 0064*); and

A writing portion adapted to write said compressed content into said designated backup destination (*server receives compressed data sent from the backup agent, paragraph 0064*).

In regard to claim 18, Richard disclosed the backup system as claimed in claim 2, wherein said restore section includes:

An information managing portion adapted to manage information for restore (*BIOS prompt the user to choose where to boot and permits the booting process to proceed, paragraph 0080-0081*);

A reading portion adapted to read a file of a restore origin while expanding it (*extract OS id and reestablish setting, fig. 5, 51, paragraph 0088*); and

A writing portion adapted to write this expanded content into a hard disk as a restore destination (*rebuild.exe will manipulate FAT directory and file system objects, paragraph 0091*).

In regard to claim 19, Richard disclosed the backup system as claimed in claim 2, wherein said backup section includes a padding portion adapted to pad an unassigned region in the hard disk in said computer with specific values (*backup agent performs an analysis of backup objects and establishes a lists of those representative of configuration, paragraph 0053*).

It is inherent that unassigned regions or non-representative of configuration regions are not transmitted to the backup server, therefore it would have a specific value of null or zero.

In regard to claim 20, Richard disclosed the backup system as claimed in claim 6, wherein said information managing portion included in said backup section is adapted to store certification data, and wherein said restore section includes a certifying portion adapted to perform certification using said stored certification data by said information managing portion included in said restore section (*prompts the user to enter the id and password, paragraph 0084-0086*).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Art Unit: 2114

8. Claims 3, 11-13, 15, 17 and 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Richard (Pub. No.: US 2001/0056425) in further view White et al. (US 6,119,208).

In regard to claim 3, Richard disclosed a backup system for backing up a hard disk of a computer, which is connected to a server via a network, characterized in that said server, comprises:

i) a boot OS creation section adapted to create a boot OS for said computer and to store it into a boot media (*Server burns CDROMs with bootable partition and ISO image, fig. 4, 37, paragraph 0068-0070*);

ii) a management information database adapted to store therein management information of said computer (*backup process stored objects received by server within a database, fig. 1, 4, paragraph 0048*); and

iii) a kernel image adapted to serve for the creation of said boot OS (*ISO image, fig. 4, 37, paragraph 0068-0070*) based on one or more kernel parameters identifying said OS installed on said computer (*the bootable partition or bootstrap further comprises the dos kernel in addition to the msdos kernel incorporated within the diskette image, paragraph 0070, bootable partition based on the DOS kernel or LINUX OS kernel, paragraph 0077*), and further characterized in that said boot media (*dos kernel in the bootable partition of the backup CDROM, fig. 4, 32, paragraph 0070*) comprises:

iv) a backup section adapted to store as a file a content, inclusive of a system region (*the bootable partition or bootstrap further comprises the dos kernel (io.sys, msdos.sys, config.sys),*

Art Unit: 2114

of the hard disk in said computer into a designated backup destination (*data set table, fig. 4; 34, paragraph 0072*), regardless of a type of an OS installed and a type of a file system (*backup agent send backup service request to server by sending the OS type and version with ID and password, fig. 2, 11-12, paragraph 0051*); and

v) a restore section adapted to restore the content of said hard disk a hard disk in said computer or into a hard disk of another computer by using the file which has been stored as a file by said backup section (*booting partition of the CDROM by POST (power-on-self-test) operation, fig. 5, 41, 43, paragraph 0079-0081*) and by transmitting the file via a network directly to said computer or said another computer (*"gold" or Master" image of a typical configuration which contains the OS with the appropriate drivers and can be used for re-creating, when required, an image of the configuration in one machine, paragraph 0004-0006*).

Richard does not teach the backup system where a backup section designated backup destination selectively comprising any of a plurality of potential backup destinations;

White et al. teach implementing a MVS backup system to identified the source MVS device by selection of the online candidate backup device by user request or automatically based upon usage criteria (*col. 4 lines 62-67 and col. 5 lines 1-21*).

It would have been obvious to modify the system of Richard by adding White et al. MVS backup system. A person of ordinary skill in the art at the time of applicant's invention would have been motivated to make the modification because it would perform the device backup operation without the necessity of data processor having expend a significant amount of processing resources (*col. 1 lines 16-27*).

In regard to claim 11, Richard disclosed a machine-readable medium tangibly embodying a program of machine-readable instructions executable by a digital processing apparatus to perform a method of backing up a hard disk of a computer, said program including modules having functions comprising:

- a creating function adapted to create a boot OS for said computer (*Server burns CDRoms with bootable partition and ISO image, fig. 4, 37, paragraph 0068-0070*);

- a backup function adapted (*BIOS prompts the user to choose whether to boot on the CDROM or on the C: drive, fig. 5, 42, paragraph 0080*) to store as a file the content, inclusive of a system region (*the bootable partition or bootstrap further comprises the dos kernel (io.sys, msdos.sys, config.sys) and rebuild.exe., paragraph 0070 lines 1-24*), of a hard disk in said computer into a designated backup destination (*server receives backup service request for restore CDROM, fig. 4, 31, paragraph 0069-0070*), regardless of a type of an OS installed and a type of a file system (*backup agent send backup service request to server by sending the OS type and version with ID and password, fig. 2, 11-12, paragraph 0051*); and

- a restore function adapted to restore the content of said hard disk into the same hard disk or a new hard disk in said computer by using the file which has been stored as a file by said backup function (*execute POST (power-on-self-test) and start booting on CDROM, fig. 5, 41, 43, paragraph 0078-0081*) and by selectively transmitting the file via a network directly to said computer or said another computer (*"gold" or Master" image of a typical configuration which contains the OS with the appropriate drivers and can be used for re-creating, when required, an image of the configuration in one machine, paragraph 0004-0006*).

With reference to a restore section restoring the content of said hard disk into a new hard disk, refer to the 35 U.S.C. 112 rejection above.

Richard does not teach the a machine-readable medium designated backup destination selectively comprising any of a plurality of potential backup destinations;

White et al. teach implementing a MVS backup system to identified the source MVS device by selection of the online candidate backup device by user request or automatically based upon usage criteria (*col. 4 lines 62-67 and col. 5 lines 1-21*).

Refer to claim 3 for motivational statement.

In regard to claim 12, Richard disclosed a backup service provision system for providing a backup of a hard disk of a computer connected to a server via the Internet (*the web, fig. 1, 1*), characterized in that said server comprises:

a boot OS creating section adapted to create a boot OS for said computer (*Server burns CDROMs with bootable partition and ISO image, fig. 4, 37, paragraph 0068-0070*);

a backup section adapted to boot said computer with said boot OS (*BIOS prompts the user to choose whether to boot on the CDROM or on the C: drive, fig. 5, 42, paragraph 0080*) and to store as a file a content, inclusive of a system region (*the bootable partition or bootstrap further comprises the dos kernel (io.sys, msdos.sys, config.sys) and rebuild.exe., paragraph 0070 lines 1-24*), of the hard disk in said computer into a designated backup destination (*server receives backup service request for restore CDROM, fig. 4, 31, paragraph 0069-0070*) regardless of a type of an OS installed and a type of a file system (*backup agent send backup*

Art Unit: 2114

service request to server by sending the OS type and version with ID and password, fig. 2, 11-12, paragraph 0051);

a management information database adapted to store management information for said computer (*backup process stored objects received by server within a database, fig. 1, 4, paragraph 0048*); and

a kernel image adapted to serve for a creation of said boot OS (*ISO image, fig. 4, 37, paragraph 0068-0070*) based on one or more kernel parameters identifying said OS installed on said computer (*the bootable partition or bootstrap further comprises the dos kernel in addition to the msdos kernel incorporated within the diskette image, paragraph 0070, bootable partition based on the DOS kernel or LINUX OS kernel, paragraph 0077*), wherein said backup service provision system is selectively (*send backup service request to server, fig. 2, 11*) configured to back up any computers connectable to said server (*backup and restore process are adapted to a corporate environment, fig. 1, paragraph 0027*).

Richard does not teach a backup service provision system designated backup destination selectively comprising any of a plurality of potential backup destinations;

White et al. teach implementing a MVS backup system to identified the source MVS device by selection of the online candidate backup device by user request or automatically based upon usage criteria (*col. 4 lines 62-67 and col. 5 lines 1-21*).

Refer to claim 3 for motivational statement.

In regard to claim 13, Richard disclosed the backup service provision system as claimed in claim 12, wherein said server further comprises a restore section adapted to restore the content

Art Unit: 2114

of said hard disk into a hard disk in said computer by using the file which has been stored as a file by said backup section (*execute POST (power-on-self-test) and start booting on CDROM, fig. 5, 41, 43, paragraph 0078-0081*).

In regard to claim 15, Richard disclosed the backup system as claimed in claim 3, wherein said boot OS creation section includes:

A parameter creating portion adapted to allow said kernel image to serve as said boot OS (*booting partition is arranged to contain a set of file systems, paragraph 0070*); and

A writing portion adapted to store said boot OS (*CDROM which has a booting partition, paragraph 0067*).

In regard to claim 17, Richard disclosed the backup system as claimed in claim 3, wherein said backup section includes;

An information managing portion adapted to manage information for backup (*backup process stored objects received by server within a database, fig. 1, 4, paragraph 0048*);

A reading portion adapted to read the content of the hard disk in said computer while compressing it (*backup agent compressed data to be transmitted through the network, paragraph 0064*); and

A writing portion adapted to write said compressed content into said designated backup destination (*server receives compressed data sent from the backup agent, paragraph 0064*).

In regard to claim 22, Richard disclosed the backup system of claim 24, wherein a selection of said designated backup destination further comprises a selection of one of a network backup style (*backup object is being systematically analysed and sent to a remote server, paragraph 0009*) and a local backup style (*user with a stand-alone computer may take advantage of hard disk image software such as PowerQuest TM and NORTON TM, paragraph 0003*).

In regard to claim 23, Richard disclosed the backup system of claim 24, wherein a restoration of contents of said designated backup destination (*CDROM, paragraph 0068*) onto a computer (*user requesting backup, paragraph 0067-0070*) further comprises designating said backup destination as a restore origin (*CDROM, paragraph 0068*).

In regard to claim 24, Richard does not teach the backup system claim 1, wherein said designated backup destination selectively comprises any of a plurality of potential backup destinations as selected by a user.

White et al. teach implementing a MVS backup system to identified the source MVS device by selection of the online candidate backup device by user request or automatically based upon usage criteria (*col. 4 lines 62-67 and col. 5 lines 1-21*).

Refer to claim 3 for motivational statement.

9. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Richard (Pub. No.: US 2001/0056425) in further view White et al. (US 6,119,208) in further view of Loaiza et al. (US 2002/0049950).

In regard to claim 21, Richard teach the backup system in claim 24, wherein said plurality of potential backup destinations comprises:

A magnetic tape device (*C: drive, paragraph 0080*);

A cassette diskette (CD) (*creation of the CDROM, paragraph 0068*); and

Said server (*backup object is being analysed and sent to a remote server, paragraph 0009*).

Richard and White et al. does not teach the backup system wherein a potential backup destination comprises a floppy disk (FD).

Loaiza et al. teach of a data integrity verification mechanism provided for backing-up data with the backup unit utilizing a variety of different types of backup components including tape drive, ZIP drive, DVD, CD ROM and floppy disk units (*paragraph 0068*).

It would have been obvious to modify the system of Richard and White et al. by adding Loaiza et al. data integrity verification mechanism. A person of ordinary skill in the art at the time of applicant's invention would have been motivated to make the modification because it would provide a wide variety of backup mechanism and medium (*paragraph 0068*).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO 892.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LOAN TRUONG whose telephone number is (571) 272-2572. The examiner can normally be reached on M-F from 8am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, SCOTT BADERMAN can be reached on (571) 272-3644. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2114

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Loan Truong
Patent Examiner
Art Unit: 2114



SCOTT BADERMAN
SUPERVISORY PATENT EXAMINER